

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAYMOND PERRY,

Plaintiff,

DECISION AND ORDER

03-CV-6170L

v.

JOANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

On July 27, 2006, plaintiff moved for an order awarding attorney's fees pursuant to 42 U.S.C. § 406(b)(1) (Dkt. #16). Plaintiff's attorney, William J. McDonald, Jr. ("McDonald"), seeks fees in the amount of \$14,632.50 on the basis of a contingent-fee agreement between plaintiff and McDonald. As part of this application, McDonald also seeks an order directing that the previous award of counsel fees in the amount of \$6,245.08 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), be refunded to plaintiff, as well as \$1,300 overpaid by the Commissioner to McDonald for services performed at the administrative level.

By letter filed August 29, 2006, the Commissioner does not oppose the motion (Dkt. #18).

Plaintiff's motion is granted. I find that the contingency-fee agreement between plaintiff and McDonald and the amount of the requested fee under that agreement are reasonable under the factors set forth in *Gisbrecht v. Barnhart*, 535 U.S. 789, 802 (2002). *See also Joslyn v. Barnhart*,


389 F.Supp.2d 454 (W.D.N.Y.2005). Plaintiff was awarded in excess of \$74,000.00 for five years of past-due benefits. Pursuant to the agreement between plaintiff and McDonald (Dkt. #16, Ex. F), McDonald is entitled to attorney's fees in an amount equal to twenty-five percent of the total award for past-due benefits, or \$14,632.50.

CONCLUSION

Plaintiff's motion for attorney's fees pursuant to 42 U.S.C. § 406(b) (Dkt. #16) in the amount of \$14,632.50 is granted. The award is to be made payable to William J. McDonald, Jr., Esq., attorney for plaintiff.

McDonald is ordered to refund to the plaintiff the amount of \$7,545.08, which represents \$6,245.08 in previously awarded EAJA fees, plus \$1,300 overpaid by the Commissioner to McDonald for services performed at the administrative level.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 5, 2006.